

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Connect America Fund ) WC Docket No. 10-90
Rural Broadband Experiments ) WC Docket No. 14-259

MEMORANDUM OPINION AND ORDER AND ORDER ON RECONSIDERATION

Adopted: August 19, 2016

Released: August 22, 2016

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order on Reconsideration, we consider and deny three separate challenges to the Wireline Competition Bureau (Bureau)'s decision in its Rural Broadband Experiments Waiver Order to deny certain requests for waiver of the post-selection review obligation to submit three years of audited financial statements (audited financials) by a specified deadline. First, we deny, pursuant to section 1.115 of the Commission's rules, an application for review filed by Worldcall Interconnect, Inc. (WCX). Second, we deny, pursuant to section 1.106(a)(1) of the Commission's rules, two separate petitions for reconsideration (Petitions) filed by AirNorth Communications, Inc. (AirNorth), and Michael D. Donnell d/b/a San Joaquin Broadband (SJB). We also dismiss as moot related petitions, including WCX's Motion for Stay, AirNorth's and SJB's requests for waiver of the obligation to submit proof of eligible telecommunications carrier (ETC) designation, and the petition filed by SJB LLC d/b/a San Joaquin Broadband (SJB LLC) for ETC designation in areas covered by SJB's provisionally selected bids.

1 See Connect America Fund; Rural Broadband Experiments, WC Docket Nos. 10-90 and 14-259, Order, 30 FCC Rcd 772 (WCB 2015) (Rural Broadband Experiments Waiver Order), partially upheld on review, Memorandum Opinion and Order, 30 FCC Rcd 8967 (2015) (upholding the Bureau's denial of waiver petitions filed by Rural Broadband Services Corporation, Lennon Telephone Company, and Last Mile Broadband LLC) (Waiver Order on Review).

2 See 47 CFR § 1.115; Application for Review by Worldcall Interconnect, Inc., WC Docket Nos. 10-90 and 14-259 (filed Feb. 9, 2015), http://apps.fcc.gov/ecfs/comment/view?id=60001015165 (WCX Application).

3 See 47 CFR § 1.106(a)(1) (providing that the Commission may address petitions for reconsideration of "final actions taken pursuant to delegated authority"); Petition for Reconsideration of Denial of Waiver of Three Years of Audited Financial Statements, WC Docket Nos. 10-90 and 14-259 (filed Feb. 24, 2015), http://apps.fcc.gov/ecfs/comment/view?id=60001020113 (AirNorth Petition); Petition for Reconsideration of Michael D. Donnell d/b/a/ San Joaquin Broadband, Petition for Reconsideration, WC Docket Nos. 10-90 and 14-259 (filed Mar. 2, 2015), http://apps.fcc.gov/ecfs/comment/view?id=60001025344 (SJB Petition).

4 See Motion for Stay by Worldcall Interconnect, Inc., WC Docket Nos. 10-90 and 14-259 (filed Feb. 9, 2015), https://prodnet.www.neca.org/publicationsdocs/wwwpdf/2915wc2.pdf (WCX Motion for Stay); Petition for Waiver of Eligible Telecommunications Designation, WC Docket Nos. 10-90 and 14-259 (filed Mar. 3, 2015) (AirNorth ETC Waiver); Petition of Michael D. Donnell d/b/a San Joaquin Broadband for Waiver of ETC Designation Deadline, WC Docket Nos. 10-90 and 14-259 (filed Mar. 6, 2015), http://apps.fcc.gov/ecfs/comment/view?id=60001025773 (SJB ETC Waiver); Petition for Designation as an Eligible Telecommunications Carrier in the State of California,

(continued....)

## II. BACKGROUND

2. In the *Rural Broadband Experiments Order*, the Commission adopted rules for a limited program of rural broadband experiments and established a competitive bidding process to select projects in three separate categories from entities willing to deploy robust broadband to consumers in areas served by incumbent price cap carriers.<sup>5</sup> The Commission also established a post-selection review process to enable the Bureau to assess provisionally selected bidders' financial and technical capabilities to meet their commitments and, ultimately, to determine whether these bidders should be authorized to receive support.<sup>6</sup> As part of this process, provisionally selected bidders were required to submit by specified deadlines certain information and documents necessary to the Bureau's assessment of bidders' fitness for authorization.<sup>7</sup>

3. On December 5, 2014, the Bureau announced its provisional selection of bids for rural broadband experiments support, including bids placed by WCX, AirNorth, and SJB.<sup>8</sup> The release of that public notice triggered these bidders' post-selection obligations to submit, by December 19, 2014, among other things, audited financial statements covering their most recent three consecutive years of operation (audited financials),<sup>9</sup> by February 3, 2015, a letter from an acceptable bank committing to issue an irrevocable stand-by letter of credit (LOC) in the amount of the provisionally selected bid (commitment letter);<sup>10</sup> and by March 5, 2015, appropriate documentation of their ETC designation in all areas for which they were provisionally selected to receive support.<sup>11</sup>

4. On December 16, 2014, WCX petitioned the Bureau for waiver of its December 19<sup>th</sup> deadline for submitting audited financial statements.<sup>12</sup> Two days later, on December 18, 2014, WCX filed its most recent three consecutive years of unaudited financial statements pending completion of its

(Continued from previous page) \_\_\_\_\_

WC Docket Nos. 10-90 and 14-259 (filed Mar. 6, 2015), <http://apps.fcc.gov/ecfs/comment/view?id=60001025756> (SJB LLC ETC Petition).

<sup>5</sup> See *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90 and 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8786-93, paras. 51-71 (2014) (*Rural Broadband Experiments Order*).

<sup>6</sup> See *id.*

<sup>7</sup> See *id.*

<sup>8</sup> See *Wireline Competition Bureau Announces Entities Provisionally Selected for Rural Broadband Experiments; Sets Deadlines for Submission of Additional Information*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 14684, 14687, Attach. A (WCB 2014) (announcing provisional selection of, among other bids, WCX's \$850,000 bid to serve 34 extremely high-cost census blocks in Texas; AirNorth's 18 bids totaling \$2,410,400 to serve 1,386 census blocks in Michigan; and SJB's four bids totaling \$14,833,187 to serve 2,585 census blocks in California) (First Round Public Notice). On March 4, 2015, the Bureau announced its provisional selection of a second round of bids for rural broadband experiments support. See *Wireline Competition Bureau Announces Additional Provisionally Selected Bidders for Rural Broadband Experiments and Sets Deadlines for Submission of Additional Information*, WC Docket Nos. 10-90 and 14-259, Public Notice, 30 FCC Rcd 2045 (WCB 2015) (Second Round Public Notice).

<sup>9</sup> See *First Round Public Notice*, 29 FCC Rcd at 14685; *Rural Broadband Experiments Order*, 29 FCC Rcd at 8787-88, para. 54.

<sup>10</sup> See *Rural Broadband Experiments Order*, 29 FCC Rcd at 8787-88, para. 54.

<sup>11</sup> See *id.*

<sup>12</sup> Petition for Waiver, WC Docket Nos. 10-90 and 14-259 (filed Dec. 16, 2014), <http://apps.fcc.gov/ecfs/comment/view?id=60001005554>.

ongoing audits.<sup>13</sup> On February 2, 2015, 44 days after its December 19<sup>th</sup> deadline, WCX submitted the requisite audited financials.<sup>14</sup>

5. On December 17, 2014, AirNorth and SJB filed separate petitions for waiver of the audited financials requirement.<sup>15</sup> In lieu of audited financials, AirNorth offered unaudited statements covering a 10-month period beginning March 16, 2014, the date the company commenced operations, and ending December 16, 2014.<sup>16</sup> AirNorth also submitted professional biographies of its managers and owners.<sup>17</sup> Similarly, in place of the requisite audited financials, SJB, a start-up company, described its proprietor's "track record of success" and presented a business plan, a 10-year financial projection, and a "letter of intent" from a top-100 bank to provide a LOC.<sup>18</sup> On February 27, 2015, SJB also submitted audited financial statements covering the roughly two and a half month period from the organization of SJB, LLC on December 8, 2014, until February 19, 2015.<sup>19</sup>

6. Both AirNorth and SJB submitted waiver petitions seeking extension of the deadline to submit proof of ETC designation.<sup>20</sup> In its waiver request, SJB indicates that the California Public Utility Commission (CPUC), by letter dated February 23, 2015, informed SJB that it did not intend to exercise jurisdiction over its ETC designation.<sup>21</sup> Accordingly, SJB submitted to the Commission an application for ETC designation in all areas covered by its provisionally selected bids, an application which remains pending.<sup>22</sup> In its waiver request, AirNorth indicates that as of the March 5<sup>th</sup> deadline, the ETC designation application that it had submitted to the Michigan Public Service Commission (MPSC) on December 17, 2014, remained pending.<sup>23</sup> On May 28, 2015, however, AirNorth filed with the MPSC a request to withdraw this application, which the MPSC granted on June 3, 2015.<sup>24</sup>

---

<sup>13</sup> See WCX Application at 7.

<sup>14</sup> See *id.*

<sup>15</sup> See Petition for Waiver of Audited Financial Statements, WC Docket Nos. 10-90 and 14-259 (Dec. 19, 2014), <http://apps.fcc.gov/ecfs/comment/view?id=60001005632> (AirNorth Financial Waiver); Michael D. Donnell dba San Joaquin Broadband Rural Broadband Experiment Application Request for Waiver of Financial Requirements, WC Docket Nos. 10-90 and 14-259 (Dec. 17, 2014), <http://apps.fcc.gov/ecfs/comment/view?id=60001005619> (SJB Financial Waiver).

<sup>16</sup> See AirNorth Financial Waiver at 3.

<sup>17</sup> See *id.* at 3-4; SJB Financial Waiver at 2.

<sup>18</sup> See SJB Financial Waiver at 2, Exhibit 2.

<sup>19</sup> See SJB Petition at 6; see also SJB, LLC, Articles of Incorporation, State of Colorado, <http://www.sos.state.co.us/biz/BusinessEntityDetail.do?quitButtonDestination=BusinessEntityResults&nameTyp=ENT&entityId2=20141748358&srchTyp=ENTITY&fileId=20141748358&masterFileId=20141748358>.

<sup>20</sup> See generally, AirNorth ETC Waiver; SJB ETC Waiver.

<sup>21</sup> See SJB ETC Waiver at 2; see also SJB LLC ETC Petition at 15-16, Exhibit A, Letter from Judith Allen, Staff Counsel, California Public Utilities Commission, to Michael Donnell, SJB LLC dba San Joaquin Broadband (Feb. 23, 2015).

<sup>22</sup> SJB LLC ETC Petition.

<sup>23</sup> See AirNorth ETC Waiver at 2; see also Application of AirNorth Communications, Inc. Requesting Designation as an Eligible Telecommunications carrier in the ETC Served Area, Application of AirNorth Communications, Inc. for designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended, in the ETC Service Area, Case No. U-17813 (filed Dec. 17, 2014) (Case No. U-17813), <https://efile.mpsc.state.mi.us/efile/docs/17813/0001.pdf>, as amended, (Feb. 24, 2015), <https://efile.mpsc.state.mi.us/efile/docs/17813/0002.pdf>.

<sup>24</sup> See Order, Case No. U-17813 (rel. June 3, 2015) (granting motion to withdraw and closing the docket), <https://efile.mpsc.state.mi.us/efile/docs/17813/0004.pdf>.

7. In its January 30, 2015, *Rural Broadband Experiments Waiver Order*, the Bureau denied the requests of 15 provisionally selected bidders for waiver of the Commission's post-selection review requirements, including the requests of WCX, AirNorth, and SJB for waiver of the audited financials requirement.<sup>25</sup> On February 9, 2015, WCX filed its application for review of the Bureau's denial of its waiver request, together with a motion for stay, seeking to enjoin the Bureau from reallocating funds reserved for its provisionally selected project to next-in-line bidders.<sup>26</sup> On February 9, 2015, and March 2, 2015, respectively, AirNorth and SJB filed their petitions seeking reconsideration of the Bureau's denial of their waiver requests.<sup>27</sup>

### III. DISCUSSION

8. The Commission may waive any provision of its rules for good cause shown.<sup>28</sup> A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.<sup>29</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>30</sup> Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>31</sup>

9. Based on the circumstances before us, we see no reason to overturn the Bureau's denial of WCX's, AirNorth's, and SJB's requests for waiver of the Commission's post-selection review deadlines. For the reasons stated below and consistent with the Bureau's decisions in its *Rural Broadband Experiments Waiver Order*, we hold that WCX, AirNorth, and SJB all fail to demonstrate the existence of special circumstances or that waiver better serves the public interest for purposes of implementing the rural broadband experiments. We therefore uphold the Bureau's decision to deny their waiver requests and remove these provisionally selected bidders from further consideration for rural broadband experiments support. We also dismiss as moot related filings, including WCX's motion for stay, AirNorth's and SJB's requests for waiver of the deadline to submit proof of ETC designation, and SJB LLC's petition for ETC designation in all areas covered by SJB's provisionally selected bids.

10. *WCX Application for Review.* In its Application for Review, WCX emphasizes that it submitted the requisite audited financials immediately before the February 3<sup>rd</sup> deadline for submitting its LOC commitment letter, and therefore, during a time frame in which the Bureau was still considering bidders' financial qualifications.<sup>32</sup> WCX also asserts that its requested 44-day extension could not have had any potential impact on the timing of the Phase II model-based auction since, as of the date it submitted its audited data, the Bureau had yet to finish its challenge process for identifying blocks as already served and thus, ineligible for inclusion in the Phase II model-based auction.<sup>33</sup> These circumstances, WCX asserts, differentiate its waiver request from the denied requests of other bidders

---

<sup>25</sup> See generally *Rural Broadband Experiments Waiver Order*, 30 FCC Rcd 772.

<sup>26</sup> See WCX Application; WCX Motion for Stay.

<sup>27</sup> See AirNorth Petition; SJB Petition.

<sup>28</sup> 47 CFR § 1.3.

<sup>29</sup> *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>30</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio I*), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972); *Ne. Cellular*, 897 F.2d at 1166.

<sup>31</sup> *Ne. Cellular*, 897 F.2d at 1166 (holding that a good cause finding requires the FCC to "explain why deviation better serves the public interest, and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation.").

<sup>32</sup> See WCX Application at 13.

<sup>33</sup> See *id.* at 12.

similarly seeking relief from the audited financials requirement and thus, render inapposite the Bureau's rationales for denying all such requests as a whole, as set forth in the *Rural Broadband Experiments Waiver Order*.<sup>34</sup> Accordingly, the Bureau's failure to recognize these unique circumstances, WCX continues, constitutes reversible error.<sup>35</sup>

11. We disagree. The even-handed enforcement of a Commission deadline for the rural broadband experiments program is justified here "by the gain in certainty and administrative ease, even if it appears to result in some hardship in individual cases."<sup>36</sup> As the Bureau stressed in its *Rural Broadband Experiments Order*, all bidders were provided with sufficient notice of their obligation to submit audited financials ten days after announcement of provisionally selected bids back in July 2014, when the Commission adopted this requirement, and "should have factored this requirement, as well as all other rural broadband experiments requirements and obligations, into their initial decision to bid for support."<sup>37</sup> Contrary to WCX's assertions, the mere absence of any harmful or prejudicial effect, without more, does not justify an extension of this deadline.<sup>38</sup> A contrary finding would undermine the integrity, efficiency, and fairness of the rural broadband experiments program as well as the purposes of the Commission's procedural rules, while providing little protection against arbitrary application of a waiver policy.<sup>39</sup>

12. Indeed, in defending its waiver request, WCX stresses that it "simply could not expend the tens of thousands of dollars in audit costs in advance of any award, until at least January of 2015," emphasizing that "[t]he burden was too high and the risk [of not being provisionally selected for support] was too great."<sup>40</sup> Yet, WCX is not entitled to a waiver simply because it chose to engage in its own cost-benefit analysis of the likelihood of winning and being able to meet the previously announced deadline for submission of the audit.<sup>41</sup> Rather, WCX assumed the risk that it would be found in default should

---

<sup>34</sup> See *id.* at 10-13.

<sup>35</sup> See *id.* at 14.

<sup>36</sup> *BellSouth Corp. v. FCC*, 162 F.3d 1215, 1225 (D.C. Cir. 1999) (holding that strict enforcement of a rule is not per se an abuse of discretion) (quoting *Turro v. FCC*, 859 F.2d 1498, 1500 (D.C. Cir. 1988)); *WAIT Radio I*, 418 F.2d at 1157 (requiring that the Commission give well-reasoned and adequately supported arguments for waiver a "hard look").

<sup>37</sup> See *Rural Broadband Experiments Waiver Order*, 30 FCC Rcd at 776, para. 9.

<sup>38</sup> For that reason, we are not persuaded by WCX's argument that its late submission of audited financials neither delayed the Phase II auction nor prejudiced next-in-line bidders or price-cap carriers participating in the Phase II auction. See also *Connect America Fund*, Order, 30 FCC Rcd 6257, 6260, para. 8 (WCB 2015) (rejecting WCX's argument that extending deadline for submission of audited financials for next-in-line bid by three weeks would not cause harm or delay the offer of model-based support, since "[a]llowing individual applicants to alter individual deadlines would have been disruptive to the orderly completion" of the Bureau's review of the Phase II challenge process to finalize the cost model for model-based support).

<sup>39</sup> See *Rural Broadband Experiments Order*, 29 FCC Rcd at 8779, para. 24 ("Effectively extending the deadline for certain provisionally selected bidders to provide audited financial statements is unfair to those entities that took the necessary steps to comply with the requirement by the deadline."); *Waiver Order on Review*, 30 FCC Rcd at 8968 (finding that strict enforcement of post-selection review requirements is not arbitrary and capricious, "particularly given that there were so many other applicants that were able to meet the financial and technical information requirements without waiver"); *cf., e.g., Application of Winstar*, Memorandum Opinion and Order, 17 FCC Rcd 6126, 6130 (2002) (finding that strict adherence to payment deadlines serves the public interests of "integrity, fairness, and efficiency of the auction process").

<sup>40</sup> See WCX Application at 19.

<sup>41</sup> See, e.g., *BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1182 (D.C. Cir. 2003) (upholding the FCC's decision to deny a waiver where rule was intended to ensure that bidders were "certain of their qualifications and financial capabilities before the auction so as to discourage default and avoid delays," and defaulting bidder's behavior was "exactly the kind of conduct the default penalty rule was designed to deter").

completion of its audit extend beyond the deadline.<sup>42</sup> In adopting the deadline for submission of audited financial statements, the Commission was aware of the financial burdens that such a deadline would impose, including the potential disproportionate effect on entities without an independent reason for conducting audits.<sup>43</sup> The Commission determined, however, that such concerns were outweighed by the need to prioritize efficient and narrow review at every stage of the rural broadband experiments selection process to fulfill the time-sensitive and limited purpose of the experiments, i.e., to inform enumerated policy questions relating to Phase II competitive auction implementation.<sup>44</sup>

13. We find unconvincing WCX's argument that removing its "cost-effective" bid, as well as the bids of several other bidders, from further consideration for support will "skew" the data derived from the experiments towards higher-cost service, thus limiting its utility in informing the Commission's future tailoring of economic incentives to deploy networks.<sup>45</sup> As underscored by the Commission in its repeated recognition of the limited scope and purpose of the projects, the utility of any data derived from the experiments is necessarily constrained not only by the timing of the Phase II implementation process but also by the pool of applicants that choose to participate in the rural broadband experiments.<sup>46</sup> And in any event, as the Commission's recently released *Phase II Auction Order* demonstrates, the Commission has now made decisions regarding the post-selection review process for the Phase II auction informed in part by what was learned from the experiments, including data associated with both authorized and defaulted bid projects, in furtherance of the different policy objectives of that auction.<sup>47</sup>

14. Finally, we are not persuaded by WCX's assertion that given the prohibitively high cost of bringing service to the areas covered by its winning bid, it is highly unlikely that the areas will be

---

<sup>42</sup> See *id.* (rejecting a request for a waiver where the appellant proceeded despite its knowledge that it was likely to suffer a penalty, but nevertheless, "gambled and lost").

<sup>43</sup> See *Rural Broadband Experiments Order*, 29 FCC Rcd at 8836, para. 71, Append. B ("[T]he information we require . . . is information we expect winning bidders will already have on hand (e.g., audited financial statements."); *Waiver Order on Review*, 30 FCC Rcd at 8969, para. 5 (recognizing that the audited financials requirement generally excluded companies from eligibility that had been in existence for less than three years and that did not conduct audits in the normal course of business).

<sup>44</sup> See *Waiver Order on Review*, 30 FCC Rcd at 8969, para. 6 ("While individual bidders may be disappointed by the resolution of their individual requests, we have achieved our primary objective in the experiment — to gain insights in a real-world environment regarding how particular requirements would impact potential bidders so that we could, in a timely manner, adjust and tailor our requirements, as necessary, for the larger Phase II competitive bidding process to follow."); *Technology Transitions et al.*, GN Docket No. 13-5 et al., Order et al., 29 FCC Rcd 1433, 1471, 1499, paras. 109, 204 (2014) (explaining that the Commission does not "envision using all unallocated funds in the broadband reserve for experiments in rural areas, but rather an amount that is sufficient to enable us to award funding to a limited number of projects" capable of producing a data set sufficient to inform certain enumerated policy concerns relating to Phase II implementation) (*Tech. Transitions Order*).

<sup>45</sup> See WCX Application at 16, 17.

<sup>46</sup> See, e.g., *Tech. Transitions Order*, 29 FCC Rcd at 1436, para. 8 (explaining that in crafting its technology transitions experiments, the Commission is not "seeking to resolve the legal and policy questions arising from the technology transitions in the context of an experiment," but instead, is "endeavor[ing] to learn in diverse ways how the modernization of communications networks is affecting the achievement of our statutory responsibilities" which in turn, will fuel on-going, factually-informed public discussion).

<sup>47</sup> See *Connect America Fund, ETC Annual Reports and Certifications, Rural Broadband Experiments*, Report and Order and Further Notice of Proposed Rulemaking, FCC 16-64, at para. 102 (May 25, 2016), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-16-64A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-64A1.pdf) (entities who do not conduct audits in the ordinary course of business but who have provided voice, broadband, or electric distribution or transmission services for at least two years may certify that they will submit by the deadline specified for the long-form application process the required audits) (*Phase II Auction Order*).

served unless WCX's waiver is granted and its bid project ultimately funded.<sup>48</sup> The possibility of such an outcome arises each time the Bureau holds a bidder in default and removes it from further consideration for support.<sup>49</sup> In the context of this limited program of rural broadband experiments, we decline to lift critical post-selection review requirements based solely on speculative judgements about future service. We emphasize that the rural broadband experiments are only one small piece of a multi-part universal service reform effort, with future opportunities for parties to bid to extend service where it is lacking in high cost areas.<sup>50</sup>

15. *AirNorth's and SJB's Petitions for Reconsideration.* AirNorth's and SJB's waiver requests were similar to the waiver requests of many other bidders that sought to submit, in lieu of the required audited financials, in whole or in part, some other form of financial data.<sup>51</sup> Their proffered data failed to provide the Bureau with a quickly reviewable, objective, and comparable source of evidence sufficient to show the bidder's relative qualifications to meet its commitments over a ten-year time frame.<sup>52</sup> Consistent with the Bureau's findings, the Commission already has unequivocally concluded that, for purposes of the rural broadband experiments, financial projections, unaudited statements, and even audited statements covering only negligible portions of the requisite consecutive three-year time frame are insufficient indicia of such qualification.<sup>53</sup> Here, we similarly reject AirNorth's and SJB's

---

<sup>48</sup> See WCX Application at 16-17.

<sup>49</sup> Cf. *Coral Wireless D/B/A Mobi PCS Request for Review of the Decision of the Universal Service Administrator et al.*, CC Docket No. 96-45 et al., Order, 29 FCC Rcd 9540, 9542, para. 8 (WCB 2014) ("Holding that the public interest prong of the waiver standard is met whenever a carrier is faced with a reduction in support would effectively negate the public interest requirement, as this criterion would be met any time application of a rule resulted in reduced support.").

<sup>50</sup> See generally *Transformation Order*, 26 FCC Rcd 17663; see also *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051, 7060, para. 30 (2014) (including unserved, extremely high-cost blocks in the Phase II competitive auction to allow participants the freedom to decide their own capabilities and methods for serving these blocks, recognizing that such blocks are often interspersed with high cost blocks and therefore, potentially serviceable at lower cost by a network producing certain economies of scale); *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15677, para. 89 (2014) (noting that "any areas left unserved after the Phase II competitive bidding process will be addressed through the Remote Areas Fund").

<sup>51</sup> See, e.g., Cricelli, Inc. Rural Broadband Experiment Application Request for Waiver of Financial Requirements, WC Docket No. 10-90, at 2 (filed Dec. 19, 2014), <http://apps.fcc.gov/ecfs/comment/view?id=60001006048> (submitting non-audited statements, income tax returns and annual bank statements); Petition for Waiver of Crystal Broadband Networks, WC Docket No. 10-90, at 1 (filed Dec. 18, 2014), <http://apps.fcc.gov/ecfs/comment/view?id=60001005842> (submitting unaudited financial statements covering two years (2011-2012) and a one-year audited statement (2013)).

<sup>52</sup> See *Waiver Order on Review*, 30 FCC Rcd at 8969, para. 6 ("[W]e made a decision to target the finite rural broadband experiments budget to those entities that provide concrete and independently audited evidence of their financial capability to fulfill their commitment to build voice and broadband capable networks."); *Connect America Fund; Rural Broadband Experiments*, WC Docket Nos. 10-90 and 14-259, Order, 30 FCC Rcd 6257, 6259-60, para. 7 (WCB 2015) (allowing the submission of unaudited statements "would provide less assurance regarding the true financial picture of the petitioners and would likely require a more resource-intensive effort by the Bureau to assess," thereby "divert[ing] the Bureau from fulfilling the Commission's overarching objective of moving swiftly to implement Phase II").

<sup>53</sup> See *Waiver Order on Review*, 30 FCC Rcd at 8970, para. 8 (rejecting RBSC's "Financial Projection Highlights" and promised submission of future audited statements and Last Miles's estimate of the costs of its proposed project and general assertion of county funding as substitutes for the required audited financial statements); *id.* at 8969, para. 5 (emphasizing that the Commission specifically required three years of audited financial statements to generally exclude companies from eligibility that had been in existence for less than three years and that did not conduct audits as a normal course of business); *Rural Broadband Experiments Waiver Order*, 30 FCC Rcd at 775-76, paras. 6-7 (emphasizing that unaudited statements, tax returns and other evidence of financial stability were less

(continued....)

efforts to circumvent the audited financial statement requirement by proffering documentation of the achievements of individual officers and/or owners.<sup>54</sup>

16. Consistent with precedent established for the rural broadband experiments, we decline to accept such evidence in lieu of audited financials.<sup>55</sup> Rejecting such evidence is not, as both AirNorth and SJB allege,<sup>56</sup> a change in policy, but rather is consistent with the very specific language employed by the Commission in creating specific post-selection requirements for the rural broadband experiments and a necessary component of a process designed to prioritize consideration of a limited number of authorizations.<sup>57</sup> Contrary to the assertions of SJB and consistent with the Bureau's prior findings, the commitment letter and audited financials requirement are not interchangeable methods of showing financial stability.<sup>58</sup> As the steward of universal service funding, the Commission is not only concerned with recouping funds disbursed to a defaulting bidder, but also with minimizing the transaction and opportunity costs associated with such defaults. The Commission determined that for the limited purposes of the rural broadband experiments, it would select entities that had been in business for three years or more, with audited financial statements. The setting of such a bar and the objective evaluation of applicants based on that criteria does not, as AirNorth argues,<sup>59</sup> unfairly disadvantage start-up corporations in a manner inconsistent with the Commission's guiding principle of competitive neutrality, but rather was a reasonable action well within our discretion to manage responsibly this limited experiment toward larger aims.<sup>60</sup>

(Continued from previous page) \_\_\_\_\_

objectively reliable than audited statements and thus, would require greater expenditure of limited Bureau resources to assess).

<sup>54</sup> See AirNorth Financial Waiver at 3-4; SJB Financial Waiver at 2.

<sup>55</sup> See *Waiver Order on Review*, 30 FCC Rcd at 8969, 8970, 8969, paras. 5, 8, and 9. The Bureau has denied similar requests for waiver of the audited financials requirement filed by potential next-in-line bidders. See, e.g., *Connect America Fund Rural Broadband Experiments*, WC Docket Nos. 10-90, 14-259, Order, 30 FCC Rcd 2022 (WCB 2015).

<sup>56</sup> See SJB Petition at 6 (arguing that the Bureau's references to "concrete evidence," "independent verification," and "financial state" differ in meaning and rigor from the standards expressed by the Commission and by the Bureau prior to the December 19<sup>th</sup> deadline, such as "financially viable," "financial qualifications," or "financial capability"); AirNorth Petition at 2 (arguing that the Bureau changed course by denying waiver requests without case-by-case consideration of proffered financial evidence).

<sup>57</sup> *Waiver Order on Review*, 30 FCC Rcd at 8969 n.15 (emphasizing that the Bureau's rejection of less than three years of audited statements is not a change in policy); *Rural Broadband Experiments Waiver Order*, 30 FCC Rcd at 776 n.24 ("The fact that the Bureau indicated prior to the application deadline in an FAQ on the Commission's website that parties unable to produce three consecutive years of audited financial statements could seek a waiver of this requirement in no way undermines our decision today to require strict adherence to the Commission's rules for the experiments and deny all of the waiver requests.").

<sup>58</sup> See *Rural Broadband Experiments Waiver Order*, 30 FCC Rcd at 777, para. 11 (explaining that the Commission required provisionally selected bidders to submit audited financial statements in addition to the commitment letter to ensure that the Bureau would have the documentation necessary to assess, independent of the any bank's judgement, the financial qualifications of each bidder to meet its commitments).

<sup>59</sup> See AirNorth Petition at 2-3 (arguing that the audited financials requirement violates the Commission's guiding principle of competitive neutrality by precluding participation of newly formed entities in the rural broadband experiments).

<sup>60</sup> *Phase II Auction Order*, FCC 16-64, n.207 ("It does not violate competitive neutrality to adopt application requirements that some potential applicants are unable to meet, when those application requirements are narrowly tailored to advance the Commission's objectives.").

**IV. ORDERING CLAUSES**

17. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 214, 254, and 303(r) of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155, 214, 254, 303(r), 1302, and section 1.115 of the Commission's rules, 47 CFR § 1.115, that this Memorandum Opinion and Order is ADOPTED.

18. IT IS FURTHER ORDERED that, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and section 1.115(g) of the Commission's rules, 47 CFR § 1.115(g), the Application for Review of Worldcall Interconnect, Inc., filed February 9, 2015, IS DENIED and the Motion for Stay of Worldcall Interconnect, Inc., filed February 9, 2015, IS DISMISSED AS MOOT.

19. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 5, 214, 254, and 303(r) of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155, 214, 254, 303(r), 1302, and section 1.106(a)(1) of the Commission's rules, 47 CFR § 1.106(a)(1), the Petition for Reconsideration filed by AirNorth Communications and the Petition for Reconsideration filed by Michael D. Donnell d/b/a San Joaquin Broadband ARE DENIED.

20. IT IS FURTHER ORDERED that the petitions for waiver to file proof of ETC designation filed by AirNorth Communications, Inc., and Michael D. Donnell d/b/a San Joaquin Broadband and the petition for ETC designation filed by SJB LLC d/b/a San Joaquin Broadband ARE DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary